



JFW/JP

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application

Inventor(s): James F. Zucherman, et al.

Appl. No.: 10/684,847

Confirm. No.: 3522

Filed: October 14, 2003

Title: INTERSPINOUS PROCESS APPARATUS AND  
METHOD WITH A SELECTABLY EXPANDABLE  
SPACER

### PATENT APPLICATION

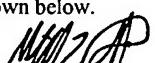
Art Unit: 3733

Examiner: Pedro Philogene

Customer No. 23910

### **CERTIFICATE OF TRANSMISSION/MAILING UNDER 37 C.F.R. §1.8**

I hereby certify that this correspondence is being electronically transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

  
(Attorney Signature)

Michael L. Robbins, Reg. No. 54,774

Signature Date: February 7, 2007

### **TRANSMITTAL LETTER RE INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. §1.56**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

It is requested that the information identified in this statement be considered by the Examiner and made of record in the above-identified application. This statement is not intended to represent that a search has been made or that the information cited in the statement is, or is considered to be, material to patentability as defined in 37 C.F.R. §1.56. If this is a continuation, divisional or continuation-in-part application, it is understood that the Examiner will consider all information which was considered by the Office in a parent application. MPEP §609. Such information therefore is not listed herein unless it is desired that the information be printed on a patent issuing from the subject application.

***Enclosed with this statement are the following:***

- Form PTO-1449. The Examiner is requested to initial the form and return it to the undersigned in accordance with M.P.E.P. §609.
- As allowed under 37 C.F.R. § 1.98(a)(2)(ii), no copies of the U.S. patent and U.S. patent application publications are enclosed, unless required by the office. *02/12/2007* *10/684,847* *01 FC:1806* *180.00 OP*
- As allowed under 37 CFR §1.98(d), copies of cited documents noted with an asterisk are not enclosed because they were previously submitted in U.S. Patent Application No.        /       , which is relied on for an earlier effective filing date under 35 USC §120, and which included an Information Disclosure Statement that complies with 37 CFR §1.98(a) through (c).

- A copy of an International Search Report dated \_\_\_\_\_ for Application No. \_\_\_\_\_.
- A copy of an International Preliminary Examination Report dated \_\_\_\_\_ for Application No. \_\_\_\_\_.
- If any of the cited/submitted documents is in a foreign language, a concise explanation of relevance is provided pursuant to 37 C.F.R. §1.98(a)(3)(I). For foreign language documents cited in a search report by a foreign patent office, the requirement for a concise explanation of relevance is satisfied by the submission herewith of an English language version of the search report. MPEP §609A(3). If a written English-language translation of a non-English language document, or portion thereof, is within the possession, custody or control of, or is readily available to any individual designated in §1.56(c), a copy of the translation accompanies this statement, 37 C.F.R. §1.98(a)(3)(ii), and satisfies the requirement for a concise explanation of relevance, MPEP §609A(3).

***This statement should be considered because:***

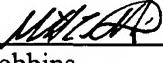
- 37 C.F.R. §1.97(b).** This statement qualifies under 37 C.F.R. §1.97, subsection (b) because:
  - (1) It is being filed within three months of the filing date of an application other than a continued prosecution application under § 1.53(d);  
-- OR --
  - (2) It is being filed within 3 months of entry of a national stage;  
-- OR --
  - (3) It is being filed before the mailing date of the first Office Action on the merits,  
-- OR --
  - (4) It is being filed before the mailing date of the first Office Action after the filing of a Request for Continued Examination under 37 C.F.R. §1.114.
- 37 C.F.R. §1.97(c).** Although it may not qualify under subsection (b), this statement qualifies under 37 C.F.R. §1.97, subsection (c) because:
  - (1) It is being filed before the mailing date of a FINAL Office Action, a Notice of Allowance, or an action that otherwise closes prosecution in the subject application, whichever occurs first.  
-- AND (*check at least one of the following*) --
  - (a) It is accompanied by a STATEMENT as set forth in 37 C.F.R. §1.97(e).  
-- OR --
  - (b) It is accompanied by the \$180 fee set forth in 37 C.F.R. §1.17(p).

- **37 C.F.R. §1.97(d).** Although it may not qualify under subsection (b) or (c), this statement qualifies under 37 C.F.R. §1.97, subsection (d) because:
    - (1) It is being filed on or before payment of the Issue Fee;  
-- AND --
    - (2) It is accompanied by a STATEMENT as set forth in 37 C.F.R. §1.97(e);  
-- AND --
    - (3) It is accompanied by the \$180 fee set forth in 37 C.F.R. §1.17(p).
  - **PTA Statement under 37 C.F.R. §1.704(d).** Each item of information contained in the *Information Disclosure Statement* was cited in a communication from a foreign patent office in a counterpart application and this communication was not received by any individual designated in §1.56(c) more than thirty days prior to the filing of the *Information Disclosure Statement*.
  - **37 C.F.R. §1.97(e)(1).** THE UNDERSIGNED ATTORNEY HEREBY STATES THAT each item of information contained in this *Information Disclosure Statement* was first cited in a communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this *Information Disclosure Statement*; or
  - **37 C.F.R. §1.97(e)(2).** THE UNDERSIGNED ATTORNEY HEREBY STATES THAT no item of information contained in this *Information Disclosure Statement* was cited in a communication from a foreign patent office in a counterpart foreign application and, to the knowledge of the person signing this statement after making reasonable inquiry, no item of information contained in this *Information Disclosure Statement* was known to any individual designated in §1.56(c) more than three months prior to the filing of this statement.
- ✓ Fee Authorization.** The Commissioner is hereby authorized to charge any deficiencies or credit any overpayment to Deposit Account No. 06-1325.

Respectfully submitted,

FLIESLER MEYER LLP

Date: February 7, 2007

By: 

Michael L. Robbins  
Reg. No. 54,774

Customer No. 23910  
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Form PTO-1449  
(Substitute)

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

Attorney Docket Number  
SFMT-01056USD

Application/Patent Number  
10/684,847

O I P E  
FEB 12 2007  
Information Disclosure Statement  
BY APPLICANT  
(Use several sheets if necessary)

Applicant/Patent Owner: James F. Zucherman, et al.

Filing/Issue Date: October 14, 2003

Group Art Unit: 3733

U.S. PATENTS

Examiner Initial		Patent Number	Issue Date	First Named Inventor	Class	Subclass	Filing Date

U.S. PATENT PUBLICATIONS

Examiner Initial		Patent Application Publication Number	Publication Date	Applicant

PENDING U.S. PATENT APPLICATIONS

Examiner Initial		Application Number	Filing Date	First Named Inventor	Petition to Expunge? Yes   No

FOREIGN PATENT DOCUMENTS

Examiner Initial		Document Number	Publication Date	Country	Class	Subclass	Trans-lation Yes   No
	1.	FR 2623085	05/1989	France			✓
	2.	DE 4012622 C1	07/1991	Germany			✓
	3.	EP 0307241 B1	12/1992	EPO			
	4.	WO 94/26193	11/1994	International			
	5.	FR 2717066	09/1995	France			✓
	6.	FR 2717068	09/1995	France			✓
	7.	DE 4409833	10/1995	Germany			✓
	8.	DE 4414781	11/1995	Germany			✓

U.S. Patent Application No. 10/684,847  
Attorney Docket No.: SFMT-01056USD  
MRobbins/sfmt/1056USD/6th\_Suppl\_IDS  
Examiner Signature: \_\_\_\_\_

- 4 -

Date Considered: \_\_\_\_\_

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	9.	WO 95/35067	12/1995	International			
	10.	WO 96/08206 A1	03/1996	International			
	11.	WO 96/39975	12/1996	International			
	12.	JP 10-179622	07/1998	Japan			✓
	13.	WO 98/55038	12/1998	International			
	14.	WO 99/56653	11/1999	International			
	15.	WO 00/38582	07/2000	International			
	16.	WO 00/53126	09/2000	International			
	17.	WO 01/26566 A1	04/2001	International			
	18.	DE 201 12 123 U1	09/2001	Germany			✓
	19.	WO 02/34120 A2	05/2002	International			
	20.	WO 02/085226 A1	10/2002	International			
	21.	DE 101 35 771 A1	02/2003	Germany			✓
	22.	WO 03/057055 A1	07/2003	International			
	23.	WO 03/101350 A1	12/2003	International			

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(Substitute)

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Examiner Initial		Document Number	Publication Date	Country	Class	Subclass	Trans- lation Yes   No
	24.	WO 2004/071358 A1	08/2004	International			
	25.	WO 2004/098465 A1	11/2004	International			

OTHER DOCUMENTS (Include author (if any), title, publisher and place of publication, date and pertinent pages)

Examiner	Date Considered
*EXAMINER: Initial if citation considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.	
*1 = Copy not submitted because it was submitted in prior application SN /_____, filed _____, 20_____, relied on under 35 USC §120. **2 = Copy not submitted because it was submitted in prior application SN /_____, filed _____, 20_____, relied on under 35 USC §120.	